ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v.	)	3:97-CR-342-M
	)	
THOMAS PEREZ,	)	
Defendant/Movant.	)	

FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

This cause of action was referred to the United States Magistrate Judge pursuant to the

provisions of Title 28, United States Code, Section 636(b), as implemented by an order of the

United States District Court for the Northern District of Texas. The Findings, Conclusions and

Recommendation of the United States Magistrate Judge follow:

I.   Findings and Conclusions

Before the Court is Defendant's motion for relief from judgment pursuant to Fed. R. Civ.

P. 60(b). Defendant's motion attacks the judgment of conviction in his criminal case. Such a

motion is properly construed as a motion pursuant to 28 U.S.C. § 2255. *See United States v.*

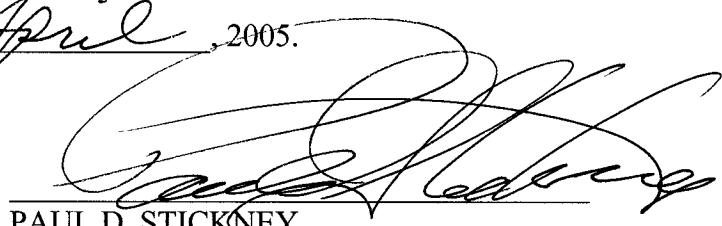*Rich*, 141 F.3d 550 (5th Cir. 1998).

Since Defendant seeks to collaterally attack his criminal judgment and sentence, the

Court should recharacterize the pleading as a motion to vacate, set aside, or correct sentence

pursuant to 28 U.S.C. § 2255. *See Jeffers v. Chandler*, 253 F.3d 827, 830 (5th Cir. 2001)

("Section 2255 provides the primary means of collaterally attacking a federal conviction and

sentence."); *Cox v. Warden, Fed. Detention Center*, 911 F.2d 1111, 1113 (5th Cir. 1990) (same).

II.   Recommendation

The Court recommends that Defendant's motion be construed as a motion to vacate, set

aside or correct the sentence pursuant to 28 U.S.C. § 2255, and that the Clerk be directed to open

a new civil action pursuant to § 2255 (nature of suit 510). It is further recommended that within

thirty (30) days from the date of filing of this order, Defendant shall be ordered to file an

amended § 2255 motion on the court approved form, containing all claims that Defendant has

with respect to the conviction in 3:97-CR-342-M.

Signed this 4 day of _____April_____ ,2005.

PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE